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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
09/990,787	11/14/2001	HyungByum Kim	16791	3121
23556	7590	10/18/2004	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC.			REICHLE, KARIN M	
401 NORTH LAKE STREET			ART UNIT	PAPER NUMBER
NEENAH, WI 54956			3761	

DATE MAILED: 10/18/2004

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/990,787
Filing Date: November 14, 2001
Appellant(s): KIM ET AL.

Nathan P. Hendon
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7-27-04.

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(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Issue A:

Appellant's brief includes a statement that claims 1-12 and 15-16 and claims 13-14 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

The rejection of claims 1-12 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

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The rejection of claims 13-14 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

Issue B:

The rejection of claims 11-12 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

WO 98/42290

CHEN et al

10-1998

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Issue A:

Claims 1-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Chen et al '290.

Group I:

Since claims 1-2 and 15-16 stand or fall together and the broadest claim of such group is claim 1, claim 1 will be treated for the purposes of this rejection.

Claim 1 requires at a minimum, i.e. "comprising", a hydrophilic first apertured nonwoven bodyside layer, called the basesheet, see element 1 in Figures 1 and 5 and page 5, lines 20-29, page 37, first full paragraph, especially page 37, line 11, the paragraph bridging pages 41-42, page 48, lines 19-21 and 25-28, laminated with a hydrophobic second apertured nonwoven layer,

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see 2 or 60 in Figures 1, 5 and 14 and page 5, lines 20-29, page 6, first two full paragraphs, page 7, lines 2-4, page 48, lines 3-4, 19-21 and 25-28. Such laminate may function as a liner for personal care product, see page 1, first two full paragraphs, page 35, lines 25-29. Also note the response to Appellant's arguments in Section (11), Issue A, *infra*.

Group II:

Since claims 13-14 stand or fall together and the broadest claim of the group is claim 13, claim 13 will be treated for the purposes of this rejection.

In addition to the structure claimed in claim 1, see discussion *supra* with respect to Group I, claim 13 requires an absorbent core positioned between the laminate of the apertured nonwoven layers and a liquid impervious baffle, see page 10, lines 7-9 in addition to the portions of Chen et al cited *supra*. It is noted that claim 13 recited lamination by a spunlace process, see the instant application at page 5, lines 3-4 for the terminology "spunlaced", so claim 13 is a product by process claim, see MPEP 2113. However, Chen et al even discloses that the lamination is by a spunlace process, see page 44, lines 7-10. Also note the response to Appellant's arguments in Section (11), Issue A, *infra*.

Issue B:

Claims 11-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 11, a positive structural antecedent basis for "said apertures...layers" should be defined, i.e. claim 7 only defines apertures in the laminate, i.e. doesn't mean in both

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layers. In regard to claim 12, is Applicant claiming the subcombination of a liner as set forth in the preamble or the combination of a personal care product as claimed in the claim body?

(11) *Response to Argument*

Issue A:

With regard to Appellants arguments bridging pages 4-8 with respect to the claim language of both Groups I and II, Appellant argues that the claim terminology “bodyside” layer means that the layer is in contact with the wearer and that since the hydrophilic first layer is claimed as such a “bodyside” layer that the claimed hydrophobic second layer of the liner will thus be a non-bodyside layer. Such arguments are narrower than the claim language which do not require the hydrophilic layer be the uppermost or outermost layer of the pantiliner or personal care product contactable with the wearer just that it is “bodyside” relative to something, e.g., the liner and/or the second hydrophobic layer. It is further noted that the claim language does not require the second hydrophobic layer be a non-bodyside layer or a non-bodyside layer only. With regard to these arguments, attention is also invited to, e.g., the paragraph at page 10, line 6 of the instant application, which doesn’t describe a hydrophilic layer only being “bodyside” to contact the wearer but as being the outermost bodyside part of liner 31 which liner is the outermost layer of the pantiliner or personal product as shown so as to be in contact with the wearer, i.e. the claim language is not commensurate in scope with this description.

In any case, whether the claim language requires the first hydrophilic layer to contact the wearer during use or not and whether the claim language requires the second hydrophobic layer to be the non-bodyside layer or not, the Chen et al reference teaches the structure, i.e. contrary to Appellant’s arguments on pages 4-8. Beginning with the broadest interpretation of the claims 1

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and 13, i.e. the Examiner's argued interpretation of "bodyside", i.e. the hydrophilic layer need not contact the wearer during use as long as it is "bodyside" relative to, e.g., the liner and/or a hydrophobic layer, see page 48, lines 19-21, i.e. the hydrophilic layer of the uppermost web of a laminate of multiple webs would be bodyside with respect to the hydrophobic layer of the underlying web of the laminate. As another example see page 48, lines 3-4, the hydrophilic layer of the web is bodyside as compared to the hydrophobic layer on the non-bodyside or lower surface of such hydrophilic layer. Even if, for the sake of this argument only, the claims did require a hydrophilic layer which contacts the wearer during use, i.e. Appellant's argued narrower interpretation of "bodyside", Chen et al teaches such at, e.g., page 5, lines 20-29 and Figures 1 and 5, i.e. at a minimum only about 5% of the upper or body contactable surface of the hydrophilic layer is covered by the hydrophobic layer, i.e. about 95% of the upper or body contactable surface of the laminate is hydrophilic layer, i.e. the hydrophilic layer is "bodyside" as argued by Appellant, and page 48, lines 3-4 again, i.e. the hydrophobic layer can be bodyside or non-bodyside.

Therefore, the rejection of claims 1-16 under 35 USC 102 is deemed proper and maintained.

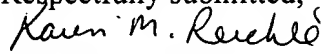
Issue B:

Appellant's remarks on page 8 not contesting this issue have been noted.

The rejection of claims 11-12 under 35 USC 112, second paragraph is deemed proper and maintained.

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For the above reasons, it is believed that the rejections should be sustained.

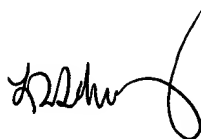
Respectfully submitted,

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Art Unit 3761

KMR
October 7, 2004

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